



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development
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|--------------------------------|--------------------|
| Public Hearing Date: | September 12, 2006 |
| Land Use Action Date: | November 7, 2006 |
| Board of Aldermen Action Date: | November 20, 2006 |
| 90-Day Expiration Date: | December 11, 2006 |

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Nancy Radzevich, Chief Planner
Jean Fulkerson, Principal Planner

DATE: September 8, 2006

SUBJECT: **Petition #284-06** MARC S. PRICE & HILLARY K. PRICE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a grade change(s) in excess of three feet to construct a by-right single-family house at 6 KESSELER WAY, Ward 8, on land known as Sec 82, Blk 37, Lot 86, containing approximately 15,662 sf of land in a district zoned SINGLE RESIDENCE 3.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioners are seeking a special permit for a greater than 3 foot grade change for a lot located within the subdivision known as Kessler Woods, in the Oak Hill neighborhood. A 3,558 sq. ft. single family dwelling is proposed for the currently undeveloped lot.

ELEMENTS OF THE PETITION

The petitioners are requesting a special permit to alter the grade of the subject property by more than 3 feet. The lot has a central depression, created in part by the installation of the roadway at a higher grade than the lot. The petitioners will be altering the grade by more than 3 feet by filling portions of the lot, rather than excavating, in order to allow for the construction of a new single-

family residence. The grade will be altered by more than 3 ft. on over 9,790 sq. ft. of the lot, or 62.5 percent of the lot area, with a maximum grade change of 7 ft. No other relief is being sought.

II. BACKGROUND

The subject property is within the subdivision known as "Kessler Woods," which was approved by the Planning Board, Acting as the Board of Survey, on August 11, 2004. The approved subdivision contains seven lots (Lot 1-7) with access on the new subdivision roadway known as "Kessler Way," and two lots (Lots 8, & 9) with access off of Harwich Road.

In addition, a total of four "Form A" (*Approval Not Required*) lots were created on this previously vacant parcel. Two (2) of these "Form A" lots (Lots J-3A and J-4A) have frontage on both Brookline Street and the new Kessler Way subdivision road. The other two "Form A" lots (Lots J-1 and J-2), located west of the subdivision, only have frontage along Brookline Street. The subject property is lot J-3A.

In 2005, the Board of Aldermen granted special permits to allow for grade changes in excess of 3 feet at three other lots within this subdivision: 7 Kessler Way, 12 Kessler Way, and 17 Kessler Way. A single-family home is currently under construction at 7 Kessler Way. The subject property abuts the lot at 12 Kessler Way, where a special permit was granted, but no construction has begun as yet.

III. ZONING RELIEF BEING SOUGHT

Based on the Chief Zoning Code Official's zoning review (SEE ATTACHMENT "A ") , the petitioners are seeking approval through:

- > *Section 30-5(b)(4), to allow for the placement or removal of sod, loam, clay, gravel or stone, or other solid material, where the existing contours of the land are to be altered by more than three (3) feet.*
- > *Section 30-23 for Site Plan Approval, and*
- > *Section 30-24(d) for Approval of a Special Permit.*

IV. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition, the Board should consider whether the alteration of the grade by more than 3 feet will have any adverse affects on the abutters and/or the character of the surrounding neighborhood.

V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The 15,662 sq. ft. subject property is located at 6 Kessler Way (lot J3-A) and is presently part of a vacant wooded site with the exception of the new roadway and subdivision infrastructure. The petitioners intend to construct a 2V2 story single-family dwelling with a 2 car attached garage. The driveway access to the residence will be on Kessler Way.



Figure 1. 6 Kessler Way from Brookline Street

B. Neighborhood

The subject property is located near the Brookline/Newton border, in Oak Hill, within a large Single Residence 3 District. The surrounding neighborhood is comprised of single-family residences, most of which were constructed in the 1950s. The neighboring parcels range in size from 7,000 sq. ft. to 14,000 sq. ft. in lot area, averaging slightly larger than 10,000 sq. ft.

VI. ANALYSIS

A. Technical Considerations –Dimensional Controls and Parking

The following table compares the proposed single-family residences to the technical requirements in a Single Residence 3 District.

| Single Residence 3 | Require | Proposed |
|--------------------------|-----------------|-----------------|
| Minimum lot size | 10,000 sq. ft. | 15,662 sq. ft. |
| Setbacks | | |
| Front | 30 ft. | 31.1 ft. |
| Side | 10 ft. | 15.3 ft. |
| Rear | 15 fl. | 38.9 ft. |
| Building height | 30 ft. | 28.4 ft. |
| Max. # of stories | 2 1/2 stories | 2 V2 |
| Floor Area Ratio | 0.35 | .2272 |
| Lot Coverage | 30% | 13% |
| Open Space | 50% | 76.23% |
| Number of parking stalls | 2 stalls | 2 garage stalls |
| Garage size | 700 sq.ft. max. | 454 sq. ft. |
| Driveway width | 12 ft. –20 ft. | 14 –19.5 ft. |

As shown in the table above the proposed single-family dwelling will conform to all dimensional requirements of the Zoning Ordinance.

B. Building Design

Although not related to this special permit, the approved subdivision includes a self-imposed protective covenant that requires approval of the building design and site improvements on each lot by a Design Review Committee (created for this subdivision). The petitioners submitted plans for design review and these were approved on August 7, 2006 (*SEE ATTACHMENT "B"*).

C. Commission Reviews

While much of the Kessler Woods subdivision is subject to Conservation Commission review, the subject lot is not within the jurisdiction of the Conservation Commission.

D. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking.

The petitioners are proposing to access the site with a driveway that will also have a "turn around" extension to allow drivers to exit the lot in a forward direction. The construction of the driveway and garage proposed by the petitioners should have no impacts on vehicular or pedestrian safety on-site or in relation to the adjacent streets. Although not specifically tied to the special permit, the total area of the driveway and turnaround appear overly large, and the Planning Department recommends the petitioners consider reducing the size of the hammerhead turn-around. This would reduce the amount of impervious surface at the site, and could potentially allow for the preservation of at least one additional existing mature tree (14" maple).

Access to single-family residences is not typically reviewed by the Fire Department. As such, there is no review memo from the Fire Department.

A site distance easement, established in June 2005, held by the City of Newton, ensures that drivers exiting Kessler Way will have adequate site distance to safely enter onto Brookline Street. (*SEE ATTACHMENT "C"*) The language of the easement prohibits signs, mailboxes, lampposts, fences, or plantings higher than 3 ft. above the curb at Brookline Street. As such, the subject plans do not include any of those types of features. Existing trees over 8 inches in diameter will be preserved, and the remainder of the easement will be clear of small trees and brush and planted with grass.

2. Adequacy of the methods for regulating surface water drainage

At the time the Planning Department was completing this memorandum, the Planning Department had not received the written review from the City Engineer, and expect that those comments will be provided to the Committee under separate cover.

3. Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means.

The petitioners submitted a landscape plan for the lot including new trees, shrubs, and groundcover. The landscape plans indicate that a total of 10 trees over 8 inches in diameter will be removed, for a total of 153 caliper inches. The Planning Department has advised the petitioners that they must comply with the Tree Preservation Ordinance. Although this ordinance is not necessarily tied to the Special Permit, because the Board of Aldermen often approve a landscape plan as part of Special Permit applications, the Planning Department encourages petitioners to design their plans to meet the requirements of the Tree Preservation Ordinance, and to have those plans reviewed by the Tree Warden prior to the public hearing. A landscape plan was submitted with the petitioners' application, but it does not include a tally of the total number of trees and total number of caliper inches that will be replaced on-site. *At the time that this memorandum was completed, the petitioners still had not met with the Tree Warden, but has been advised to do so, prior to the public hearing, so that they could present any information regarding any alterations they intend to make to the submitted landscape plan in order to comply with the Tree Preservation Ordinance.*

Given the amount of fill proposed for this lot the Planning Department is concerned that more trees than shown on the plans will actually be removed. *The Planning Department has also asked the petitioners to meet with the Tree Warden for his opinion as to the viability of long term maintenance of the remaining trees.*

The submitted plans include proposed grade changes along Brookline Street. The Planning Department typically recommends additional landscaping to screen such areas. However, on this lot, the frontage along Brookline Street is controlled by the Site Distance Easement Line, as described above, and for safety reasons, extensive landscaping, or landscaping over 3 ft. in height, should not be installed in this area. The easement area should not be considered a buffer that will remain in its natural state. There is nothing in the easement language that would preclude thinning or cutting of existing vegetation.

The petitioners' plans do call for a 10 ft. wide strip of the land, running along the rear of the property, to be left in its natural state. That area is currently densely vegetated and acts as a screening buffer for the adjoining lot.

4. Avoidance of major topographical changes: tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas

The petitioners are proposing major topographical changes and substantial tree removal. Although the proposed grades on the subject property have been designed to match the approved grades at the adjoining property at 12 Kessler Way (Board Order #222-05) as suggested by staff, the Planning Department had noted concerns regarding the amount of regrading on the overall site. When asked if the alterations to the grade could be reduced, the petitioners' engineer indicated that given the existing topography of the lot, in relation to the approved grade changes at the abutting lot (12 Kessler

Way) and the adjacent roadways, water would pond on the lot without the proposed grade change. Further the petitioners' engineer has indicated that this proposed grading plan will actually help to reduce the amount of run-off onto the abutters' properties.

The landscape plans indicate a semi-circular retaining wall will be constructed as a tree well to protect a 17" diameter oak tree. The wall starts at 0 ft. at one end and gradually rises to 3 ft. in height. *The Planning Department understands that the petitioners intend for this wall to be constructed of stone; the proposed materials should be indicated as such on the plans.*

5. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines

Although the homes in this subdivision will be large, the lots have been planned to be larger than the average existing neighborhood lots. The development covenants for the subdivision require that all newly constructed single family homes must be a minimum of 3,000 s.f. in size. The home as designed is an elaborately detailed neo-colonial with clapboard siding. The front entrance is emphasized with a covered porch with bluestone steps and an ornate railing.

E. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use and structure

Although the home is larger than those generally found in the surrounding neighborhood, it should be consistent, in size, with the other residences that will be constructed within this subdivision. The single-family use is appropriate for this location and is consistent with the uses in the surrounding neighborhood.

2. The use as developed and operated will not adversely affect the neighborhood

If drainage is controlled on site, the construction of the proposed single-family dwellings and changes in the topography should not adversely affect the neighborhood. *The City Engineer will provide comments under separate cover regarding the petitioners' plan to control drainage on site.*

The petitioners' plans include a 10-ft. wide strip of land along the rear of the lot, which is to remain as an undisturbed natural area and should provide screening from adjacent properties. This mimics, but is not part of, a buffer area at the rear of other lots on Kessler Way, which was shown on the approved subdivision documents. In order to maintain this area in its natural state for the benefit of the neighborhood, the Planning Department recommends the continued maintenance of this area limited to:

- removal of any trash that may accumulate and non-native invasive species to preserve the natural wooded character of these areas,
- selective pruning and cutting of trees or brush to prevent, control or remove hazards, disease, insect damage or fire, or to preserve or improve the condition of the natural area,

- removal of dead or diseased trees only if such trees pose a danger to people, adjacent residences, wildlife and/or adjacent trees, and
- removal or addition of vegetation in the course of good forestry management practices, but only as may be necessary to preserve the present condition of the natural area.

VII. SUMMARY

The petitioners are proposing to alter the grade by more than 3 feet on the subject property in order to construct a single-family residence and access driveway. The lot has a central depression, created in part by the installation of the roadway at a higher grade than the lot. The petitioners will be altering the grade by more than 3 feet by filling portions of the lot, rather than excavating, in order to allow for the construction of a new single-family residence. The grade will be altered by more than 3 ft. on over 9,790 sq. ft. of the lot, or 62.5 percent of the lot area, with a maximum grade change of 7 ft. No other relief is being sought.

Although the Planning Department had asked the petitioners to try to reduce the amount of regrading on site, the petitioners' engineer has indicated that based on the approved grades at the abutting site (12 Kessler Way), the height of the abutting roadways, and existing topography of this site, that the proposed fill is necessary otherwise water would pond on-site.

The landscape plans indicate that a total of 10 trees over 8 inches in diameter will be removed, for a total of 153 caliper inches. The Planning Department has advised the petitioners that they must comply with the Tree Preservation Ordinance, and although this ordinance is not necessarily tied to the Special Permit, because the Board of Aldermen often approve a landscape plan as part of Special Permit applications, the Planning Department has encouraged the petitioners to design their plans to meet the requirements of the Tree Preservation Ordinance. At the time that this memorandum was completed, the petitioners still had not met with the Tree Warden, but has been advised to do so prior to the public hearing, and to present any information regarding any alterations they intend to make to the submitted landscape plan, in order to comply with the Tree Preservation Ordinance.

ATTACHMENTS:

ATTACHMENT A: Zoning Review Memorandum, August 7, 2006

ATTACHMENT B: Design Review Approval, August 7, 2006

ATTACHMENT C: Site Distance Easement, June 22, 2005

Zoning Review Memorandum

Dt: August 7, 2006

To: Jason Rosenberg, representing Marc & Hillary Price

CC: John Lojek, Commissioner of Inspectional Services
Michael Kruse, Director, Department of Planning and Development

Fr: Juris Alksnitis, Chief Zoning Code Official



Re: Request for approval of grade change in excess of 3 feet.

Applicant(s)

Site: 6 Kessler Way

Zoning: Single Residence 3

Current use: Vacant

SBL: Section 32, Block 02, Lot J-3A

Lot. Area: 15,662 sq. ft.

Prop. use: Single family

Background:

The subject lot is located on the corner of Brookline St. and Kessler Way, within a new subdivision created as part of an overall plan to develop a part of the former Edison land, aka Kessler Woods, per subdivision plans titled "Kessler Woods - Definitive Plan of Land, Newton Massachusetts, March 17, 2004, last revised July 19, 2004, Sheets 1 — 8, approved by the Planning Board. While much of this area is also subject to certain Conservation Commission requirements as set out in the Order of Conditions pertaining to project DEP# 239-474, including certain plans subsequently approved by the Commission pursuant to the Order of Conditions including a grading plan and landscape plan (see *Conservation Commission documents*, below for complete reference), the subject lot is outside the area within the jurisdiction of the Conservation Commission. In addition, the subdivision is subject to development controls set out in the Kessler Woods Protective Covenants. The applicants having purchased the subject lot seek to build a single family home for themselves and have obtained design review approval for their house as required per the Protective Covenants. Due to existing topographical conditions and roadway elevations, the applicants anticipate altering the existing grade within their lot more than 3 ft., which necessitates a special permit/site plan approval to authorize the grade change per Section 30-5(b)(4).

Administrative determinations

1. The subject parcel is a lot created after December 7, 1953 and is subject to post-1953 dimensional controls applicable to a lot in the SR-3 zone.
2. Section 30-15, Table 1, *Density & Dimensional Controls in Residence Districts and for Residential Uses*, sets forth the applicable density and dimensional controls for new lots in the SR-3 zone. The proposed building meets the applicable controls

Plans and materials reviewed:

- Kessler Woods, Newton, Massachusetts, Design Review Approval, dated August 7, 2006.
- Plan set titled "6 Kessler Way – Newton, Mass., to Accompany the Petition of Marc Price and Hillary Price", Dated July 13, 2006, prepared by Verne T. Porter, Jr., PLS, Land Surveyors – Civil Engineers, 354 Elliot St., Newton, MA 02464, stamped and signed by Stephen E. Poole, Registered Professional Engineer and Verne T. Porter, Jr., Registered Professional Land Surveyor, consisting of the following:
 - > Sheet 1 of 7, Area Plan
 - > Sheet 2 of 7, Proposed Grading and Building Location
 - > Sheet 3 of 7, Proposed Height Calculation and Detail Sheet
 - > Sheet 4 of 7, Area of More Than 3' Grade Change
 - > Sheet 5 of 7, Proposed Tree Removal Plan
 - > Sheet 6 of 7, Existing Conditions Plan
- Plan titled "Landscape Design Plan #6 Kessler Way, Newton, MA", Sheet 1 of 1, dated 7/19/06, revised 7/19/06, prepared by John T. Judge, stamped and signed by John T. Judge, Registered Landscape Architect
- Plan set titled "Proposed Residence, Mr. & Mrs. Price, Lot J-3A, Kessler Woods, Newton, MA prepared by Paul Apkarian Architects, Inc., dated 7/7/06, rev. 8/4/06, unless otherwise noted below, bearing neither professional stamp nor signature, consisting of the following:
 - > A1.0 – Elevations
 - > A3.0 – First Floor Plan
 - > Untitled & undated sheet containing First Floor Plan and Door Schedule
 - > Untitled & undated sheet containing Second Floor Plan

Conservation Commission documents

- Order of Conditions – Kessler Woods Subdivision, DEP#239-474, dated August 31, 2004, issued by the Newton Conservation Commission.
- Plan titled "Kessler Woods – Definitive Plan of Land, .Newton, MA, Roadway, Infrastructure & Related Grading Plan", dated 8/6/04, prepared by H.W. Moore Associates, Inc., Engineers & Planners, 112 Shawmut Avenue, Boston, Mass., 02118-229.
- Plan titled "Kessler Woods, Newton, Massachusetts, Schematic Landscape Plan", Drawing L-S, dated October 14, 2004, last revised 11/9/04, prepared by Mary Smith Associates, P.C., Landscape Architects, 30 Chestnut St., Quincy, MA 02169.

KESSELER WOODS
NEWTON, MASSACHUSETTS

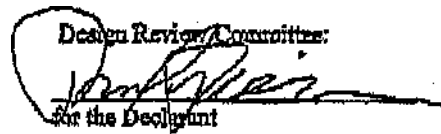
DESIGN REVIEW APPROVAL

On this 7th day of August 2006 the undersigned hereby approves the plans
submitted on 8/7 2006 for the construction of improvements and structures
on Lot J-A3A by (Name of Applicant) Marc & Hilary Price in accordance with the
provisions of the Kessler Woods Newton, Massachusetts Protective Covenants recorded
with the Middlesex South Registry of Deeds in Book _____ Page _____

Said approval is subject to construction by the undersigned upon the completion

that said structures and improvements have been completed substantially in compliance with the hereto referenced approved plans

In
WITNESS WHEREOF I do hereby set my hand and seal this 7th day of August

Design Review Committee:

for the Declarant

Architect: The Architectural Team


for the City Principal, Liu AIA

COMMONWEALTH OF MASSACHUSETTS

On the day or 2006 before me the undersigned Navy Public,
then personally appeared before me 1110 mime
and _____ and proved to me through satisfactory evidence of

**SIGHT DISTANCE EASEMENT**
 Bk: 46473 Pg: 469 Doc: EASE
 Page: 1 of 2 08/27/2006 02:31 PM

C/S Kessler, LLC, a Massachusetts limited liability company with an office at do Cornerstone Corporation, 400 Blue Hill Drive, Suite 2C, Westwood, Massachusetts 02090 (the "Grantor"), for nominal consideration of less than \$100.00 paid, grants to the City of Newton, a municipal corporation at 1000 Commonwealth Avenue, Newton, Massachusetts 02459 ("Grantor"), with quitclaim covenants, a perpetual sight distance easement, for the herein below described purpose, over and through the following described land:

A portion of four (4) parcels located on the southerly sideline Brookline Street in the City of Newton, County of Middlesex, Commonwealth of Massachusetts and more particularly shown and described as Sight Distance Easement on Lots J-1, J-2, and J-4A on a plan entitled: "Subdivision Plan of Land in Newton, MA", dated August 1, 2004, Scale 1"40', prepared by Toomey-Munson & Associates, Inc. and recorded at the Middlesex South Registry of Deeds in Plan Record Book 2004, Page 1516 (the "Plan") and being more fully described as follows:

SIGHT DISTANCE EASEMENT LOTS J-1, J-2, AND J-3A

Beginning at a point in the southerly sideline of Brookline Street, at the northwesterly corner of the parcel herein; thence running

| | |
|---------------|--|
| Easterly | along a curve to the right having a radius of 1093.63 feet, and an arc length of 250.44 feet (having a chord bearing of S 87°35'28" E, and a chord distance of 249.89 feet) to a point; thence running |
| Southeasterly | along the arc of a curve to the right having a radius of 25.00 feet, and an arc length of 28.28 feet to a point; thence running |
| N 84°01'45" | a distance of 271.25 feet to the Point of Beginning. |

The above described Sight Distance Easement over Lots J-1, J-2 and J-3A contains an area of 3,370 square feet or 0.077 acres.

SIGHT DISTANCE EASEMENT LOTS J-4A

Beginning at a point in the southerly sideline of Brookline Street, at the northwesterly corner of the parcel herein described; thence running

| | |
|---------------|---|
| Easterly | along a curve to the right having a radius of 1093.63 feet, and an arc length of 20.98 feet (having a chord bearing of S 75°18'14"E, and a chord distance of 20.98 feet) to a point; thence running |
| N 86°18'24"W | a distance of 39.32 feet to a point; thence running |
| Northeasterly | along a non-tangent curve to the right having a radius of 25.00 feet, and an arc length of 19.65 feet (having a chord bearing of N 81°37'28"E, and a chord distance of 19.15 feet) to the Point of Beginning. |

described Sight Distance Easement over Lot J-4A contains an area of 104 square feet

Brookline Street, Lot J-1, Newton, MA

The purpose of said Sight Distance Easement is prohibit the Grantor and any successor owners of said Lots J-1, J-2, J-3A from interfering with traffic visibility across the sight distance easement area by restricting Grantor and said successor owners from placing or erecting any structure, improvement or object including, but not limited to, signs, mailboxes, lampposts or fences or installing or allowing any planting within said Sight Distance Easement area that is higher than three (3) feet above the curb of Brookline Street.

This Sight Distance Easement shall run with the land, and this instrument shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and all persons claiming by, through or under them. Said Easement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties have executed this as an instrument under seal as of the 22 day of June -e, 2005.

C/S KESSELER, LLC
By: Cornerstone Manager, Inc.

By: Paul E.
Its es ident
Duly Authorized



COMMONWEALTH OF MASSACHUSETTS

____ COUNTY Of _____, 2005

On this day, before me, personally appeared the above-named Paul E. Tryder as President of Cornerstone Manager, Inc. and not individually, proved to me through satisfactory evidence of identification which were **to be the person whose name is signed on the** foregoing instrument and ho acknowledged to me the foregoing instrument to be his/her free act and deed, in his/her duly authorized capacity as foresaid, on behalf of C/S KESSELER, LLC.

E, or Paul E. Tryder
Notary 'ublic
My Commission expires: 10/29 /10

01%

Edward C. Brown
Notary Public for the State of Massachusetts